

Award No. 13325

Docket No. TE-12417

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway that:

1. The Carrier violated the provisions of the Telegraphers' Agreement when it improperly paid the relief employe, C. E. Roberts, working 8:00 A. M. to 4:00 P. M. at Attalla, Alabama, at the Telegrapher-Clerk hourly rate of pay, \$2.37 per hour, instead of the Agent-Telegrapher hourly rate of pay, \$2.60 per hour, at this station, each Sunday commencing September 27, 1959.

2. The Carrier shall now be required to compensate C. E. Roberts, the incumbent of the relief position at Attalla, Alabama, working 8:00 A. M. to 4:00 P. M., the difference between the Telegrapher-Clerk rate which he was paid and the Agent-Telegrapher rate, each Sunday beginning September 27, 1959, a difference of \$1.84 per day.

EMPLOYES' STATEMENT OF FACTS: There is an agreement in effect between the parties with rates effective September 1, 1949, and rules revised as of September 1, 1949. At page 98 of the agreement, the negotiated positions on the Alabama Great Southern Railroad are shown as follows:

"STATION	POSITION	RATE	
		Straight Time pro rata	Time and ½ Overtime (Monthly)
Attalla	Sta-Agt.	\$365.73	
	3 Telgr.	156.00	\$234.00"

Before September 17, 1959, the freight agent's office was located about one-quarter mile away from the ticket office. In the ticket office the Carrier had a clerk-telegrapher position on all three shifts. The first shift clerk-telegrapher position was owned by Mr. J. F. Pruitt, Sr. It was assigned a work week of Monday through Sunday with rest days of Saturday and Sunday. The assigned hours of the position were 7:00 A. M. to 3:00 P. M., and the relief position owned by Mr. C. E. Roberts was assigned a work week of Sunday through Saturday, with Friday and Saturday as assigned rest days. On Sunday the relief position relieved the first shift clerk-telegrapher position 7:00 A. M. to 3:00 P. M.; on Monday and Tuesday, the relief position relieved the second

fore, it is perfectly clear that claimant definitely occupies a regular five-day assignment consisting of two days of relief work on Monday and Tuesday, two days of relief work on Wednesdays and Thursdays and one day "of other work" as clerk-telegrapher on Sunday, with two consecutive rest days. On each work day of his assignment, he is classified according to duties performed, as specified in Rule 1 (b).

With respect to the second contention, there has been no change in the classification and work of claimant's assignment on Sundays, nor has the rate of his assignment been reduced on any day. Therefore, it is evident that Rule 2 was not violated and that there is nothing in this rule supporting the claim.

Carrier has shown that the reclassification of the agent position at Attalla did not change or affect the Sunday work of claimant or other employees classified and rated as clerk-telegrapher at that station, and that in making the change effective September 24, 1959 it complied fully with the applicable provisions of the effective Telegraphers' Agreement. For the reasons stated herein, carrier has shown that the evidence of record does not support the claim that the agreement was violated, and respectfully requests that the claim be denied. (Exhibits not reproduced)

OPINION OF BOARD: The issue is whether Claimant is being properly paid for his work on Sundays. Resolution turns on whether he is performing relief service on a rest day of an agent-telegrapher, as Employees contend; or is performing "other work" within the meaning of Rule 4 (e), as the Carrier contends.

PERTINENT RULE

Insofar as here pertinent Rule 4 (e) of the Agreement reads:

"(e) Regular Assignments—All possible regular relief assignments with five days of work and two consecutive rest days will be established to do the work necessary on rest days of assignments in six or seven-day service or combinations thereof, or to perform relief work on certain days and such types of other work on other days as may be assigned under this agreement.

* * * * *

"The regular relief positions established under this paragraph (e) shall be bulletined and shall be paid the rates applicable to the position on which relief service is performed . . . "

Award Number 13325
Docket Number TE-12417

THE FACTS

Prior to September 24, 1959, Carrier maintained separate freight and passenger stations at Attalla, Alabama. An agent at the freight station was assigned to work Monday through Saturday, with Sunday as rest day with no relief provided. At the passenger station were three clerk-telegrapher positions, one on each trick, seven days per week.

Effective September 24, 1959 the freight and passenger stations were consolidated; the first trick clerk-telegrapher position was abolished; the position

of agent was reclassified to agent-telegrapher at the same monthly rate; and, the agent-telegrapher worked the first trick which had been worked by the occupant of the abolished clerk-telegrapher position.

Prior to September 24, Claimant, on Sundays, relieved the occupant of the first trick clerk-telegrapher position. After that date he worked the hours on Sundays which are worked by the agent-telegrapher on all other days of the week. For this Sunday work Carrier pays Claimant the clerk-telegrapher rate.

RESOLUTION

Carrier says that Claimant performed the same work on Sundays both before and after September 24 and it was and is the work of a clerk-telegrapher; that he performs no work on Sundays that is not done regularly by the second and third trick clerk-telegraphers; that he is not required to perform any agent's work on Sundays; that the cash drawer is kept locked, no freight shipments are forwarded, and Claimant does not initiate or answer any correspondence other than handling telegrams and train orders. From this it argues that Claimant does not relieve the agent-telegrapher or anyone else on Sundays; and, on Sundays he is assigned "other work" within the meaning of that phrase in Rule 4 (e). Bearing in mind that it has been long established that a relief employee need not perform all the duties of a position as an indispensable condition of entitlement to its rate, the record fails to convince us that Carrier's argument has merit.

In two opposite Awards we have found, under similar facts, issues and contentions, that the position taken by the Carriers violated the agreements. Awards Nos. 5722 and 13090. The Carrier, herein, argues that those Awards are palpably wrong. We do not agree.

From considerations of the record as a whole, we will, for the foregoing reasons, sustain the Claim.

Award Number 13325
Docket Number TE-12417

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1965.